

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

U.S. BANK NATIONAL ASSOCIATION  
AS TRUSTEE FOR THE SPECIALTY  
UNDERWRITING AND RESIDENTIAL  
FINANCE TRUST MORTGAGE LOAN  
ASSET-BACKED CERTIFICATES  
SERIES 2006-BC4,

Plaintiff,

v.

WESTLAND REAL ESTATE  
DEVELOPMENT AND INVESTMENTS,  
*et al.*,

Defendants.

Case No. 3:16-cv-00501-MMD-CSD

ORDER

Plaintiff U.S. Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4 sued Defendants Westland Real Estate Development and Investments, Thunder Properties Inc., and Phil Frink & Associates, Inc.,<sup>1</sup> bringing a single claim for quiet title to establish that a deed of trust (“DOT”) that was allegedly assigned to Plaintiff continues to encumber the property commonly known as 17655 Little Peak Court, Cold Springs, Nevada 89508 (the “Property”) following a homeowners’ association foreclosure sale held back in 2011. (ECF No. 1.) In reviewing the pending motions (ECF Nos. 91, 92, 93, 101, 104), the Court noticed a potential issue going to Plaintiff’s standing. Because the Court is “required sua sponte to examine jurisdictional issues such as standing[.]” *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002) (citation omitted), and as further

---

<sup>1</sup>Phil Frink & Associates, Inc. was apparently served (ECF No. 33) but never appeared or participated in the pending briefing. Westland Real Estate Development and Investments disclaimed any interest in the Property. (ECF No. 37.) So Thunder is the only Defendant who has been actively participating in the pending briefing.

1 explained below, the Court will order Plaintiff to show cause why it has standing to  
2 prosecute this action.

3 Plaintiff alleges that the DOT was assigned to it by National City Bank f/k/a National  
4 City Bank of Indiana in an assignment recorded with the Washoe County Recorder as  
5 Instrument No. 3850376. (ECF No. 1 at 4.) No copy of this assignment is attached to  
6 Plaintiff's Complaint. Similarly, in its pending motion for summary judgment, Plaintiff  
7 states that, "[t]hrough a series of assignments, US Bank became beneficiary of the deed  
8 of trust in July 2009." (ECF No. 91 at 3.) This sentence is followed by a citation to Plaintiff's  
9 Exhibit 2. (*Id.*) However, Plaintiff's Exhibit 2 contains only one assignment, not two—and  
10 the only assignment is from Integrity 1<sup>st</sup> Financial, LLC to National City Bank of Indiana.  
11 (ECF No. 91-2.) The assignment from National City Bank of Indiana to Plaintiff is missing  
12 from the exhibit. (*Id.*) This prompted the Court to search for the document referenced in  
13 the Complaint, Instrument No. 3850376 (ECF No. 1 at 4), on the Washoe County  
14 Recorder's Office's website to see if the Court could instead take judicial notice of the  
15 assignment apparently missing from the exhibit. *See, e.g., Dowers v. Nationstar Mortg.,*  
16 *LLC*, 852 F.3d 964, 967 n.1 (9th Cir. 2017) (taking judicial notice in pertinent part of  
17 "publicly-recorded documents"). However, this search revealed that the document with  
18 Instrument No. 3850376 is the Notice of Delinquent Assessment and Claim of Lein [sic]  
19 Homeowners Association signed by Gayle A. Kern, Esq. and dated February 16, 2010.  
20 *See Washoe Country Recorder's Office*, Document Search and Copies for Document #  
21 3850376 (Last Accessed June 25, 2024),  
22 <https://icris.washoecounty.us/ssrecorder/document/DOC366S6523?search=DOCSEAR>  
23 [CH1503S1](https://icris.washoecounty.us/ssrecorder/document/DOC366S6523?search=DOCSEAR); *see also* <https://perma.cc/2GQM-XHC3> (archived copy). Said otherwise,  
24 Instrument No. 3850376 does not establish that Plaintiff was ever assigned the DOT. And  
25 while Amy Bernal, an Assistant Vice President for Bank of America, N.A. swore in 2022  
26 that "U.S. Bank has been the beneficiary of record of the deed of trust since July 24,  
27 2009[,]" this representation is not supported any evidence, is contradicted by the missing  
28 evidence described above, and the Court is skeptical that she would have personal

1 knowledge of Plaintiff's ownership of the repayment rights embodied in the DOT in any  
2 event. (ECF No. 91-3 at 3.)

3 In sum, the Court cannot definitively say that Plaintiff was ever assigned the DOT,  
4 and therefore cannot definitively say that Plaintiff has standing to prosecute this case. *Cf.*  
5 *Carrington Mortg. Servs., LLC v. Cactus Springs at Fairfax Vill. Homeowners Ass'n*, 814  
6 F. App'x 315, 316 (9th Cir. 2020) (finding the plaintiff "had standing to bring a quiet title  
7 action because it was assigned the deed of trust.") (citing *Edelstein v. Bank of N.Y.*  
8 *Mellon*, 286 P.3d 249, 260 (Nev. 2012)). The Court cannot resolve the various issues  
9 raised in the pending motions unless and until it is satisfied Plaintiff has standing. See  
10 *United States v. Viltrakis*, 108 F.3d 1159, 1160 (9th Cir. 1997) ("the jurisdictional issue of  
11 standing can be raised at any time, including by the court *sua sponte*." ) (citation omitted).

12 It is therefore ordered that Plaintiff must show cause, in writing (no more than five  
13 pages excluding exhibits), within 14 days, why and how it has standing to prosecute this  
14 case.

15 It is further ordered that Thunder Properties may file a response to Plaintiff's show  
16 cause response (also limited to no more than five pages excluding exhibits) within seven  
17 days of Plaintiff's filing. No reply will be permitted. The Court may set a hearing after  
18 reviewing both responses.

19 DATED THIS 25<sup>th</sup> Day of June 2024.

20  
21 

22 MIRANDA M. DU  
23 CHIEF UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28